Agenda F

April 5, 2010

GARRISON DIVERSION CONSERVANCY DISTRICT
STATUS REPORT ON THE RED RIVER VALLEY WATER SUPPLY PROJECT

Garrison Diversion is the co-lead representing the State of North Dakota on the Red River Valley Water Supply Project Environmental Impact Statement (EIS). This update is provided on a regular basis to all state agencies. If you would like additional information, please contact us at gdcd@daktel.com, 800-532-0074 or go to www.garrisondiversion.org.

Environmental Impact Statement

- The Secretary of Interior signed a memorandum on January 15, 2009, disclosing the following:
  - The project selected to meet the needs of the Red River Valley is the Preferred Alternative, a pipeline from the McClusky Canal to Lake Ashtabula; and,
  - The identified treatment processes are adequate to meet the requirements of the Boundary Waters Treaty.
- The Final EIS was available to the public on December 28, 2007.

Lake Agassiz Water Authority

- A joint meeting of the LAWA board and operational plan work group met on March 9. The revised operational plan was presented to the board and work group. The value engineering process was discussed, with the board recommending that the engineering review team include representation on LAWA's behalf. The LAWA representation should include expertise in Sheyenne and Red River hydrology and water quality, as well as large diameter pipeline design and construction experience. The next meeting of the LAWA board and work group is scheduled for June 8.

Pre-final Design Effort

- The following is a summary of the ongoing efforts on the task orders:

  Right-of-Way: Approximately 269 parcels with 173 landowners will need to be negotiated on the proposed right-of-way. To date, 132 landowners have signed option agreements. In Sheridan County, 27 of 32 landowners have signed; Wells County 23 of 49 landowners have signed; Foster County 52 of 59 landowners have signed; and Griggs County 30 of 33 landowners have signed.

  One landowner in Wells County expressed concern about the impact that the location of the pipeline near his farmyard would have on his future operating plans. An alternate route through his property has been established to reduce the concern. The new route also reduced the cost of the project.

  Garrison Diversion has wrapped up the effort to obtain options for right-of-way. The next steps to acquire the right-of-way will occur when the decision is made to exercise the options.

  There were 12 landowners that did not sign access agreements. Access to this property is needed to complete the environmental surveys, geotechnical investigations and collect other physical information for the prefinal design and permitting efforts. Garrison Diversion petitioned the court to gain access to complete this work as weather permits this spring and summer. The court has provided access to the properties located in Foster, Griggs and Wells Counties to complete the work. The Sheridan County land petition hearing is set for April 7.

  Permitting and Environmental Services: Notice on the determination of wetlands under the jurisdiction of the Corps of Engineers has been provided to Garrison Diversion. These wetlands along with the other isolated wetlands, will be field verified in the spring when weather permits. The wetlands under easement by the US Fish and Wildlife Service have been field verified.

The class 3 cultural and historic properties field review will be completed this spring in the areas that were not done because access was not granted in 2009.

On March 5, the team met with Griggs County to explain the proposed road crossing and design standards. In addition, they proposed a process for them to keep informed and to gather information ensuring that restoration of the road crossings occurs and that haul roads are identified and repaired to their satisfaction. Griggs County also has a land use permitting process that was discussed.

The team is currently drafting permit applications for all of the permits required for the project.

Operational Plan: The revised draft of the operational plan was presented to the work group on March 9. Input was gathered, and a final document and the supporting technical memorandums will be sent to the work group for written comments. This will end the development of the operational plan at this stage of the project. It will remain in draft form until the project moves closer to construction.

Garrison Diversion presented the draft operational plan to EPA in Denver on March 18.

Preliminary Design: Work on engineering evaluations regarding the preliminary design is approximately 90% complete. Garrison Diversion attended a design team meeting, which was held in Denver on March 16 and 17 to gather input from pipe manufacturers and pipeline construction companies

Utility potholing, soil boring and supplemental surveying is approximately 70% complete and will be resuming the week of April 12.

State Agencies

- Garrison Diversion continues to coordinate with the State Water Commission, ND Department of Health, and the ND Game and Fish on the upcoming efforts to develop the operational plan.

Schedule

- The next steps are to get authorization from Congress and to obtain a Record of Decision from the lead federal agency. Garrison Diversion, the State Water Commission and the Governor's office are working with the Congressional Delegation to move these efforts forward.

Dave Koland

Dave Koland, General Manager

GARRISON DIVERSION CONSERVANCY DISTRICT
STATUS REPORT ON THE RED RIVER VALLEY WATER SUPPLY PROJECT

Garrison Diversion is the co-lead representing the State of North Dakota on the Red River Valley Water Supply Project Environmental Impact Statement (EIS). This update is provided on a regular basis to all state agencies. If you would like additional information, please contact us at gdcd@daktel.com, 800-532-0074 or go to www.garrisondiversion.org.

Environmental Impact Statement

- The Secretary of Interior signed a memorandum on January 15, 2009, disclosing the following:
  - The project selected to meet the needs of the Red River Valley is the Preferred Alternative, a pipeline from the McClusky Canal to Lake Ashtabula; and,
  - The identified treatment processes are adequate to meet the requirements of the Boundary Waters Treaty.
- The Final EIS was available to the public on December 28, 2007.

Lake Agassiz Water Authority

- A joint meeting of the LAWA board and operational plan work group met on March 9. The revised operational plan was presented to the board and work group. The value engineering process was discussed, with the board recommending that the engineering review team include representation on LAWA's behalf. The LAWA representation should include expertise in Sheyenne and Red River hydrology and water quality, as well as large diameter pipeline design and construction experience. The next meeting of the LAWA board and work group is scheduled for June 8.

Pre-final Design Effort

- The following is a summary of the ongoing efforts on the task orders:

Right-of-Way: Approximately 269 parcels with 173 landowners will need to be negotiated on the proposed right-of-way. To date, 132 landowners have signed option agreements. In Sheridan County, 27 of 32 landowners have signed; Wells County 23 of 49 landowners have signed; Foster County 52 of 59 landowners have signed; and Griggs County 30 of 33 landowners have signed.

One landowner in Wells County expressed concern about the impact that the location of the pipeline near his farmyard would have on his future operating plans. An alternate route through his property has been established to reduce the concern. The new route also reduced the cost of the project.

Garrison Diversion has wrapped up the effort to obtain options for right-of-way. The next steps to acquire the right-of-way will occur when the decision is made to exercise the options.

There were 12 landowners that did not sign access agreements. Access to this property is needed to complete the environmental surveys, geotechnical investigations and collect other physical information for the prefinal design and permitting efforts. Garrison Diversion petitioned the court to gain access to complete this work as weather permits this spring and summer. The court has provided access to all the properties to complete the work.

Permitting and Environmental Services: Notice on the determination of wetlands under the jurisdiction of the Corps of Engineers has been provided to Garrison Diversion. These wetlands along with the other isolated wetlands, will be field verified in the spring when weather permits. The wetlands under easement by the US Fish and Wildlife Service have been field verified.

The class 3 cultural and historic properties field review will be completed this spring in the areas that were not done because access was not granted in 2009.

On April 19, the team met with townships in Wells County to explain the proposed road crossing and design standards. In addition, they proposed a process for them to keep informed and to gather information ensuring that restoration of the road crossings occurs and that haul roads are identified and repaired to their satisfaction.

The team is currently drafting permit applications for all of the permits required for the project.

Operational Plan: The revised draft of the operational plan was presented to the work group on March 9. Input was gathered, and a final document and the supporting technical memorandums will be sent to the work group for written comments. This will end the development of the operational plan at this stage of the project. It will remain in draft form until the project moves closer to construction.

Garrison Diversion presented the draft operational plan to EPA in Denver on March 18.

Preliminary Design: Work on engineering evaluations regarding the preliminary design is approximately 95% complete. Garrison Diversion attended a wrap-up design team meeting, which was held in Denver on May 4 and 5 to review the final changes and to discuss the next steps for the remainder of 2010 and 2011.

Utility potholing, soil boring and supplemental surveying resumed the second week in April and is approximately 85% complete.

State Agencies

- Garrison Diversion continues to coordinate with the State Water Commission, ND Department of Health, and the ND Game and Fish on the upcoming efforts to develop the operational plan.

Schedule

- The next steps are to get authorization from Congress and to obtain a Record of Decision from the lead federal agency. Garrison Diversion, the State Water Commission and the Governor's office are working with the Congressional Delegation to move these efforts forward.

Dave Koland

Dave Koland, General Manager

North Dakota State Water Commission

900 EAST BOULEVARD AVENUE, DEPT 770 • BISMARCK, NORTH DAKOTA 58505-0850
701-328-2750 • TDD 701-328-2750 • FAX 701-328-3696 • INTERNET: http://swc.nd.gov

Agenda K

MEMORANDUM

TO: Governor John Hoeven,
North Dakota State Water Commission Members

FROM: Dale L. Frink, Secretary

SUBJECT: Approval on Conditional Water Permit Application No. 6124 for Industrial Water Use from the Missouri River (Lake Sakakawea)

DATE: June 1, 2010

On December 15, 2009, International Western Company, Fort Worth, TX, applied to the State Engineer for Conditional Water Permit No. 6124 to divert 18,000 acre-feet of water annually from five points of diversion on Lake Sakakawea, at a maximum pumping rate of 12,600 gallons per minute for industrial use. North Dakota Century Code 61-04-06 states, in part, "If an application is approved, the state engineer shall issue a conditional water permit allowing the applicant to appropriate water. Provided, however, the commission may, by resolution, reserve unto itself final approval authority over any specific water permit in excess of five thousand acre-feet [6,167,409.19 meters]."

The proposed industrial use under Conditional Water Permit Application No. 6124 is to provide water for drilling and hydro-fracing of oil wells. Recent estimates indicate the completion of from between 1,500 to 1,800 oil wells per year for the next 10 to 15 years. Water use is estimated from between 1.5 to 4.0 million gallons of water per well. Based on these estimates, minimum fresh water demand is 69,000 acre-feet (6,900 acre-feet per year) and maximum fresh water demand is 331,400 acre-feet (22,100 acre-feet per year). The aquifers in western North Dakota cannot provide ground water to meet this estimated demand. The only reliable water source in western North Dakota in terms of both quantity and quality, to meet this estimated demand, is Lake Sakakawea/Missouri River. Maximum estimated daily oil field demand is about one-tenth of one percent of the daily flow at Bismarck.

To reduce stress on western North Dakota's limited ground-water resources, appropriation of water for large-scale industrial use must be from Lake Sakakawea/Missouri River.

I recommend the State Water Commission approve Conditional Water Permit Application No. 6124 for an annual appropriation of 18,000 acre-feet annually, from the following five points of diversion located on Lake Sakakawea, at a maximum pumping rate of 12,600 gallons per minute for industrial use:

1) **NW1/4 of Section 31, Township 151 North, Range 093 West.**
2) **NE1/4 of Section 36, Township 151 North, Range 094 West.**
3) **NE1/4 of Section 31, Township 154 North, Range 094 West.**
4) **NE1/4 Section 35, Township 153 North, Range 093 West.**
5) **SE1/4 of Section 26, Township 153 North, Range 093 West.**

OFFICE OF THE NORTH DAKOTA STATE ENGINEER
RECOMMENDED DECISION

MEMO TO: Dale L. Frink, P.E., State Engineer, through
Robert B. Shaver, Director, Water Appropriation Division RS 5/13/10
FROM: Daniel J. Farrell, Water Resources Engineer
SUBJECT: Conditional Water Permit Application No. 6124 –
International Western Company, Inc.
DATE: 13 May 2010

Introduction

International Western Company, Inc., (IWC) has filed Conditional Water Permit Application (CWPA) Number 6124 requesting authorization to appropriate 18,000.0 acre-feet of water for Industrial use at a withdrawal rate of 12,600 gallons per minute (gpm). IWC has proposed five (5) points of diversion (POD) in this application. The first listed POD is located in the northwest quarter of Section 31, Township 151 North, Range 93 West of Mountrail County. The second POD listed is located in the northeast quarter of Section 36, Township 151 North, Range 94 West of Mountrail County. The third POD listed is located in the northeast quarter of Section 31, Township 154 North, Range 94 West of McKenzie County. The fourth POD listed is located in the northeast quarter of Section 35, Township 153 North, Range 93 West of Mountrail County. The fifth POD listed is located in the southeast quarter of Section 26, Township 153, Range 93 of Mountrail County. The source of the water is Lake Sakakawea within the Lake Sakakawea sub-basin of the Missouri River basin. The priority date of the application is 15 December 2009. The deadline for receipt of written comments regarding the proposed appropriation was 17:00 (CST) on 23 February 2010. There was one comment letter received by the State Engineers Office within the comment period. Two comment letters were received after close of the comment period.

Water Source Information

The source of the water, as noted above, is Lake Sakakawea. Lake Sakakawea, based on information supplied by the U.S. Army Corps of Engineers (USACOE), can contain as much as 23.8 million acre-feet of water. According to the USACOE, these 23.8 million acre-feet are divided into four pools or categories. The permanent pool is water held between elevations 1673 and 1775 and containing approximately 4,980,000

acre-feet. The multiple use pool is water held between elevations 1775 and 1837.5 and containing approximately 13,130,000 acre-feet. The flood control and multiple use pool is water held between 1837.5 and 1850 and contains approximately 4,222,000 acre-feet. The exclusive flood control pool is water held between elevations 1850 and 1854 containing approximately 1,489,000 acre-feet. The first downstream monitoring site on Lake Sakakawea is a gauging station managed by the United States Geological Survey (USGS) located near the control structure for Garrison Dam, identified as gauge number 06338000. This gauge reports the elevation of the waters in Lake Sakakawea. Records held by the USGS indicate that the record low level of Lake Sakakawea was recorded 11 May 2005 at an elevation of 1805.8 feet msl.

Comment Received and Response

The State Engineers Office received one comment letter within the comment period in response to the notification process for this application. The McKenzie County Water Resources District Board filed a comment letter about this proposed appropriation of water. Jaret Wirtz, Manager, expressed the concerns that the McKenzie County Water Resources District Board in that the application "...is not consistent with McKenzie County's long term water management plan in that it does not consider other multiple uses such as potable water and irrigation."

Industrial Use is a beneficial use identified in the North Dakota Century Code, (NDCC) Section 61-04-06.1. "Industrial Use" is defined in NDCC §61-04-01.1(5) as: "...the use of water for the furtherance of a commercial enterprise wherever located, including, but not limited to manufacturing, mining and processing."

The policy of the Appropriation Division of the State Engineers Office has been to limit each application to one beneficial use, with the exception of "Municipal Use" and "Rural Water Use". These two beneficial uses together are submitted as "Multiple Use".

Future water use from Industrial points of diversion can be modified to other beneficial uses consistent with NDCC §61-04-06.1 through the submission of "Change of Beneficial Use" forms provided by the Appropriation Division.

The State Engineer received a letter of concern on 24 February 2010 from Mr. Mike McKenna of the North Dakota Game and Fish Department. This letter was received one day after the comment period closed at 17:00 (CST) 23 February 2010. Mr. McKenna expressed concerns about the possible impact from the proposed water

intakes on fish and wildlife resources. He asserts that a "...comprehensive inventory of all existing water intakes and an evaluation of all alternatives needs to be approved prior to the issuance of a water permit." In addition, he questions whether the State Engineer can approve a conditional water permit prior to the U.S. Army Corps of Engineers issuing a permit.

Due to the fact that Mr. McKenna's letter of concern was received one day after the comment period deadline, the North Dakota Game & Fish Department cannot be a party of record. The USACOE is required to evaluate the effects on fish and wildlife from the proposed water intakes as part of their permitting process. As a result, it is not necessary for the State Engineer to perform this analysis.

Robert Shaver, Director of the Appropriation Division and this author, on 21 November 2008, participated in a telephone conference call with several personnel from the USACOE. These personnel were Phil Brown, Lake Manager, Tim Kolke, Senior Realty Manager and Charles Sorenson. The purpose of the telephone conference call was to discuss water resource development from Lake Sakakawea. An outcome of the conference call was the recommendation to the USACOE that areas be identified in which water resource development would make the least impact to cultural resources and fish and wildlife resources. Once identified, these areas could be the focus of industrial development of the water resources of Lake Sakakawea with a minimal impact to the cultural and wildlife resources.

The State Engineer does not require a permit form the USACOE prior to the issuance of a conditional water permit.

The State Engineer received a letter of concern on 12 March 2010 from Ms. Tanya Sauter, City Auditor for the City of New Town. This letter of concern was received 17 days after the comment period for this application had closed, and as a result, the City of New Town cannot be a party of record. Ms. Salter expressed concern with "...potential negative impacts this appropriation may have with our municipal water supply system." Given the volume of the water requested for industrial use in this permit application in relation to natural flows in the Missouri River and storage volume available in Lake Sakakawea, the proposed industrial withdrawals will not have any undue effects on the water supply for the City of New Town.

Analysis

Prior appropriators, in this instance, can be considered all the appropriators from the lake, both upstream of the applicant and downstream, as the lake level is relatively uniform over the entire lake surface. There are 83 permits with 137 points of diversion and one application with one point of diversion that are senior to this application that have, or are requesting, authorization from the State Engineer to withdraw water from Lake Sakakawea. The total volume of water authorized under these 83 permits is 3,372,945.7 acre-feet. The majority of this total, 3,145,000.00 acre-feet, is held under Conditional Water Permits 1416, 1416A and 1416A-01, all associated with the Garrison Diversion Conservancy District (GDCD) and classified as Multiple Use. All the prior appropriators authorized to take water from Lake Sakakawea can be divided into the following categories:

TYPE OF USE	NUMBER	ACRE-FEET
Municipal	8	108,506.0
Irrigation	55	89,539.8
Industrial	5	13,760.0
Fish & Wildlife	6	605.9
Power Generation	1	15,000.0
Multiple Use	4	3,145,125.0
Rural Water	4	409.0

Evaporation over the surface area of Lake Sakakawea is computed by the Corps of Engineers and reported in the annual report for Lake Sakakawea. The latest annual report indicates that the average annual evaporation over the years 1967 through 2008 is 869,000 acre-feet.

Inflows to Lake Sakakawea come from many sources, both regional and local. Regional inflows can include, but not limited to, the Missouri River and the Yellowstone River. Local inflow sources can include, but are not limited to, the Little Muddy River, the White Earth River, Shell Creek and the Little Missouri River.

Consideration of Statutory Criteria

1. **The rights of a prior appropriator will not be unduly affected.**
   There is enough storage in Lake Sakakawea and in-flows from the regional and local sources to confirm that the rights of a prior appropriator will not be unduly affected.

2. **The proposed means of diversion or construction are adequate.**
   A professional engineer registered in the state of North Dakota is undertaking the design of the proposed structure. Therefore, the means of diversion will be designed and constructed properly.

3. **The proposed use of water is beneficial.**
   The proposed use of the planned appropriation is listed in the application as Industrial. This use is listed as approved uses in the criteria listings in the North Dakota Century Code (NDCC) §61-04-06.1. Therefore, the proposed use of the water can be considered beneficial.

4. **The proposed appropriation is in the public interest. In determining the public interest, the state engineer shall consider all of the following:**

   a. **The benefit to the applicant resulting from the proposed appropriation.**
      The resultant benefit of this proposed appropriation to the applicant is of an economic nature.

   b. **The effect of the economic activity resulting from the proposed appropriation.**

      The economic activity resulting from the proposed appropriation would be in the entire project life, from expenditures during the construction of the facility to the taxes the applicant will be paying.

   c. **The effect on fish and game resources and public recreational opportunities.**

      The proposed appropriation of water would have a minimal effect on the fish and game resources. The proposed appropriation is not expected to have any effect on public recreational opportunities.

   d. **The effect of loss of alternate uses of water that might be made within a reasonable time if not precluded or hindered by the proposed appropriation.**

      Alternate uses of the water have not been proposed. Therefore, the proposed appropriation is not expected to have an effect on alternate uses of water.

   e. **Harm to other persons resulting from the proposed appropriation.**

      The proposed appropriation is not expected to present harm to other persons.

f. The intent and ability of the applicant to complete the appropriation.
The applicant has the intent and ability to complete the proposed project.

Therefore, the proposed appropriation is in the public interest.

Recommendation

The criteria for the issuance of a water use permit are detailed in Paragraph 06 of Chapter 04 of Title 61 of the North Dakota Century Code (NDCC 61-04-06). This application meets these criteria, provided the conditions noted below are attached. Conditional Water Permit Application number 6124 is hereby recommended for approval for the annual use of 18,000 acre-feet of water at a maximum withdrawal rate 12,600 gallons per minute from points of diversion located in the northwest quarter of Section 31, Township 151 North, Range 93 West; the northeast quarter of Section 36, Township 151 North, Range 94 West; the northeast quarter of Section 31, Township 154 North, Range 94 West; the northeast quarter of Section 35, Township 153 North, Range 93 West; and the southeast quarter of Section 26, Township 153, Range 93 all for the beneficial purpose of Industrial uses. The following conditions shall apply to the water use permit number 6124:

1. This water permit is granted subject to water use from the source by senior appropriators. Withdrawals shall cease upon order of the State Engineer.

2. This water permit is subject to water use by downstream prior appropriators in the State of North Dakota.

3. Failure to comply with any order of the State Engineer may result in forfeiture of this water permit. This includes the withdrawal of water at times that are not authorized.

4. Prior to the beneficial use of water under this permit, an in-line, continuous recording totalizing flow meter shall be installed on every pump discharge line to measure the quantity of water pumped from the water source. The water flow meter must meet the following requirements:

    A. The water flow meter must be certified by the manufacturer to record neither less than 98 percent nor greater than 102 percent of the actual volume of water passing the meter when installed according to the manufacturer's instructions.

    B. The water flow meter must have a display that is readable at all times, whether the system is operating or not.

C. The water flow meter must have a totalizer that meets the following criteria:

   a. Is continuously updated to read directly only in acre-feet, acre-inches, gallons, cubic feet, or barrels (42 US gallons);

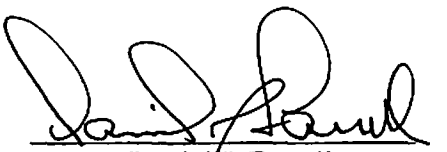
   b. Has sufficient capacity without recycling past zero more than once each year to record the quantity of water diverted in any one calendar year;

   c. Has a dial or counter that can be timed with a stopwatch over not more than a 10 minute period to accurately determine the rate of low under normal operating conditions; and

   d. Has a nonvolatile memory if the meter is equipped with an electronic totalizer.

D. The water flow meter must be installed according to the manufacturer's specifications and must be properly maintained according to manufacturer's recommendations including proper winterization such as removal during non-operating times in the winter.

E. The water flow meter shall be available for inspection by representatives of the State Engineer.



Daniel J. Farrell
Water Resource Engineer

North Dakota State Water Commission

900 EAST BOULEVARD AVENUE, DEPT 770 • BISMARCK, NORTH DAKOTA 58505-0850
701-328-2750 • TDD 701-328-2750 • FAX 701-328-3696 • INTERNET: http://swc.nd.gov

Agenda L

MEMORANDUM

TO: Governor John Hoeven
Members of the State Water Commission
FROM: Dale L. Frink, State Engineer
SUBJECT: Missouri River Update
DATE: May 17, 2010

On May 11, system storage in the six-mainstem reservoirs was 59.4 million acre-feet (MAF), 4.2 MAF above the average system storage for the end of April, and 5.6 MAF more than last year. The record minimum system storage for the end of April was 35.3 MAF in 2005, and the maximum system storage for the end of April was 67.1 MAF in 1997. The Corps predicted runoff above Sioux City for 2010 to be 26.5 MAF, 107% of normal. This results in a forecast that the system will have 54.2 MAF at the end of the year. The record low end of year system storage was 34.0 MAF in 2007, and the maximum end of year storage was 60.95 MAF in 1975.

On May 11, Lake Sakakawea was at an elevation of 1839.2 feet msl, 8.5 feet higher than a year ago, and 6.7 feet above its average end of April elevation. The record minimum end of April elevation was 1806.6 feet msl in 2005, and the maximum end of April elevation was 1847.5 in 1997. Lake Sakakawea is forecast to peak at 1841.5 ft msl at the end of June.

The elevation of Lake Oahe was 1616.3 feet msl on May 11; this is 3.2 feet higher than last year and 13.8 feet higher than its average end of April elevation. Lake Oahe is forecast to peak at 1616.6 feet msl at the end of June. The record minimum end of April elevation for Lake Oahe was 1574.7 feet msl in 2005, and maximum end of April elevation was 1617.9 in 1997.

Fort Peck Lake was at an elevation of 2225.4 feet msl on May 11, this is 10.1 feet higher than a year ago and 2.9 feet below its average end of April elevation. The forecast calls for Fort Peck to peak at 2225.5 feet msl at the end of June.

The Mountain Snowpack in the reach above Fort Peck appears to have peaked at 77% of the normal accumulation on April 15. The Mountain Snowpack in the reach between Fort Peck and Garrison appears to have peaked at 79% of the normal peak accumulation on May 9. The Mountain Snowpack normally peaks near April 15 and 80% normally remains on May 15.

The Corps of Engineers' basic forecast, 26.5 MAF of runoff, shows full service flows for navigation, and no navigation season shortening. The actual length of the navigation season and service level will be determined by the amount of water in storage on July 1.

This spring, both the March and the May spring pulse system storage conditions were met. Due to considerable amounts of snow in the plains snowpack, river levels were well above flow limits, eliminating the March Pulse. The magnitude of the March pulse was to be 5,000 cfs minus the flow on the James River just above its confluence with the Missouri River upstream of Sioux City. The James River peaked on March 19, with an average daily flow of 26,400 cfs. Currently, the Corps is monitoring the downstream flow limits, and water temperatures to determine if a May pulse will be implemented. To date, flows at the target locations downstream are above flow limits, and are expected to remain so for the foreseeable future. In addition, water temperatures are well below the target temperature of 16 degrees Celsius. The cool wet weather is expected to continue making it highly unlikely the Corps will implement a May pulse from Gavins Point dam.

The Missouri River Recovery Implementation Committee (MRRIC) met at the United Tribes Technical College in Bismarck on April 27-29. Authorized by Congress in the 2007 Water Resources Development Act, the Committee is to make recommendations and provide guidance on: 1) a study of the Missouri River and its tributaries know as the Missouri River Ecosystem Recovery Plan (MRERP), and 2) activities in the existing Missouri River recover and mitigation program (MRRP). MRRIC has nearly 70 members who represent local, state, tribal, and federal interests throughout the Missouri River Basin. Committee decisions are made by consensus. One item that MRRIC addressed in the April meeting was a recommendation to the Corps on the 2011 Fiscal Year Recovery Program Work Plan funding, and how MRRIC and the Corps should interact on a longer time line. The next MRRIC meeting will be in July located in Wyoming. More information visit about MRRIC is available at the website www.moriverrecovery.org.

Congress has authorized the Corps of Engineers to conduct a study of the Missouri River basin to determine if changes to the purposes authorized by the Flood Control Act of 1944 may be warranted. This study is called the Missouri River Authorized Purpose Study (MRAPS).

Comments submitted by the North Dakota State Water Commission to the U.S. Institute for Environmental Conflict Resolution (USIECR) on the Missouri River Authorized Purposes Study (MRAPS) Involvement Situation Assessment that was prepared by the Osprey Group in April 2010 are attached to this memo. The Corps will officially start the scoping phase of the MRAPS process May 25 in Mobridge, South Dakota. Thirty public scoping meetings and 11 Tribal meetings are planned throughout the basin. Scoping meetings in North Dakota will be held in Williston on June 16, Bismarck on June 17, and Fargo, June 18th. All meetings will be an open house format and run from 5pm – 8pm. The public scoping comment period will run through September 20, 2010. The MRAPS website, which has much more information is www.mraps.org.

DLF:BE:mmb/1392

North Dakota State Water Commission

900 EAST BOULEVARD AVENUE, DEPT 770 • BISMARCK, NORTH DAKOTA 58505-0850
701-328-2750 • TDD 701-328-2750 • FAX 701-328-3696 • INTERNET: http://swc.nd.gov

Ms. Gail Brooks
U.S. Institute for Environmental Conflict Resolution
Transmitted by e-mail to brooks@ecr.gov

RE: Comments on the Missouri River Authorized Purposes Study, Situation Assessment Report, April 2010, prepared by the Osprey Group for the USIECR

May 6, 2010

Dear Ms. Brooks:

The Corps has been tasked with the extremely difficult task of revisiting all aspects of the Missouri River, as we know it today. We commend them for being proactive by incorporating an approach that will allow for the optimal public input into this study process. The following comments were formed in reviewing the Involvement Situation Assessment of the Missouri River Authorized Purposes Study prepared by The Osprey Group in April 2010.

Section II. Background:

In hindsight it has become more apparent what the Corps, USIECR (U.S. Institute for Environmental Conflict Resolution), and The Osprey Group were hoping to accomplish with this assessment. Unfortunately, over the course of the assessment, there was a lot of confusion. It seemed like invitations to the focus groups and interviews came out of left field. People were, and still are, confused by the selection of interviewees and focus group members. Even now if one were to look at the distribution of participants in the focus groups it could be construed as unevenly weighted. We believe that the USIECR and the Osprey Group may have caused more confusion and harm to public relations than if the Corps had conducted the assessment themselves.

Section III. Context:

Although the Osprey Group's methods seemed confusing, the information that was collected seemed to represent the broad collection of views that are held today in the Missouri River Basin, highlighting the complexity of the situation at hand.

Section IV. Options for Moving Forward/Recommendations:

If the Corps is looking for public interaction in the MRAPS development, the Inform, Involve, and Collaborate process that the Osprey Group outlined in their report could be an effective method of incorporating public ideas. Its design must be as fair and as balanced as possible.

Inform – It is essential that the Corps be aggressive in providing easily understood information to a broad public audience during the MRAPS process. The entire process should be transparent; all pertinent documents should be posted in a central location for easy accessibility. That information would include the 1944 Flood Control Act, as amended, and other subsequent relevant legislation and judicial rulings. In addition, the Corps needs to inform and educate the public on the internal processes the Corps is using in this assessment, for example, the requirements and uses of the NED and Regional Economic Development. These processes and documents need to be provided and understood by the public.

Involve – When involving the public in the MRAPS process it is crucial that the Corps is not, or seem to be, exclusive. Several of the options the Osprey Group mentioned in their report under the "involve" section seemed that they could perceived as exclusive, especially the technical working group, focus groups, and association meetings. Even the Osprey Report could be construed as seeming exclusionary or unfair in its ordering of the private navigation associations before MoRAST, an organization with a lot of history and broad representation. Furthermore, Open House/Workshops are not conducive in fostering an environment where people are comfortable in expressing their views. The Open House/Workshop format is better suited to inform the public. A public meeting format where people are encouraged to provide comments for all to hear is more effective.

The statement made in the "Technical working group" section "An option mentioned by some is the idea of having working groups that focus on each of the authorized purposes." It would seem if working groups were formed for each authorized purpose then MRAPS would be meaningless. There would be an interest group for existing purposes but no voice for possible change. This approach would result in proponents of each currently authorized purpose advocating their position, and create a polarized environment.

Collaborate: The Osprey Group suggests an executive advisory council to the Corps appointed by each state governor. The council would provide a small group environment to discuss difficult issues. If the Corps forms the suggested council, it should also recommend that each member form a public task force in their jurisdiction to allow the representative to disseminate information and more clearly understand and communicate constituents' views. Each state would be responsible in forming the organization and membership for their perspective task forces.

A general comment about the Osprey Groups report and assessment is the apparent misunderstanding that Minnesota is included in the Missouri River Basin, since Minnesota was not consulted in the assessment or mentioned in the report.

Thank you for giving us the opportunity to comment on the assessment the Osprey Group created.

Sincerely,

Dale L. Frink
State Engineer

DLF:KDC/0576

North Dakota State Water Commission

900 EAST BOULEVARD AVENUE, DEPT 770 • BISMARCK, NORTH DAKOTA 58505-0850
701-328-2750 • TDD 701-328-2750 • FAX 701-328-3696 • INTERNET: http://swc.nd.gov

Agenda M

MEMORANDUM

TO: Governor John Hoeven
ND State Water Commission Members

FROM: Dale L. Frink, State Engineer

DATE: May 17, 2010

SUBJECT: Water Plan Update – ND's 2011-2013 Water Development Report

As part of the State Water Commission's efforts to update and maintain the State Water Management Plan, the Planning and Education Division is once again in the process of developing a Water Development Report for the 2011-2013 biennium. Project information collected for the 2011-2013 report will be used in the State Water Commission's budgeting process later this summer, and a full report will be presented during the 62nd Legislative Assembly in 2011 to document the state's water development needs.

Earlier this year, project information forms were sent out to individual and joint water boards, communities, and water system mangers to identify projects that may come to the Commission for cost-share in the 2011-2013 biennium and beyond.

So far, we have received information on 180 water projects – most of which could potentially come to the Commission for cost-share in the next biennium.

Over the course of the next month, we will be entering the information into our project database. Once that information has been entered, we will then be able to provide estimates of potential financial needs for individual projects or by project type (i.e. flood control, water supply, irrigation, etc.).

DLF:lak:pmf/322